FILED
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BY

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**BILLINGS DIVISION**

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| **RODNEY HERMAN SWAIN,** | **CV-05-57-BLG** |
| **Plaintiff,** | |
| **vs.** | **ORDER ADOPTING FINDINGS AND RECOMMENDATIONS OF U.S. MAGISTRATE JUDGE** |
| **DR. SKELTON and NURSE KYDLAND,** | |
| **Defendant.** | |

On November 8, 2005, United States Magistrate Judge Richard W. Anderson entered his Findings and Recommendation. Magistrate Judge Anderson recommends Plaintiff's Motion to Proceed *In Forma Pauperis (Doc. # 2)* be denied.

In some cases, upon service of a Magistrate Judge's findings and recommendation, a party has ten days to file written objections. *See* 28 U.S.C. § 636(b)(1). However, in the present case Plaintiff is not allowed ten days to file written objections because the Magistrate Judge's authority to make the recommendation on this pretrial matter is derived from 28 U.S.C. § 636(b)(3), which does not provide a party ten days to file written objections with the district court. *Minetti v. Port of Seattle,* 152 F.3d 1113, 1114 (9th Cir. 1998).

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Anderson's Findings and Recommendation are well grounded in law and fact and adopts

them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Plaintiff's Motion to Proceed *In Forma Pauperis* (***Doc. #2***) is **DENIED** and the Complaint be **DISMISSED WITHOUT PREJUDICE** for failure to pay the filing fee or properly apply to proceed *in forma pauperis*.

The Clerk of Court shall notify the parties of the making of this Order.

DATED the 10th day of November 2005.

RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE